SPECIAL ARTICLES

MEDICAL JURISPRUDENCE*

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San Francisco

The execution of a release by an injured person to the person whose negligence caused the injury, bars an action by the injured person against a physician for alleged negligent treatment of the injury by the physician. Two Superior Court decisions have been rendered recently in which this principle was adopted and used by the Superior Judges presiding in the cases.

In the first case the plaintiff was injured in an automobile accident and was treated by the physician. During the course of his treatment he made a settlement with the insurance carrier of the automobile by the operation of which he had been injured. He then brought his suit for alleged malpractice against his physician, and in answering the complaint the physician's attorneys pleaded that he had accepted a sum of money from, and executed a release to, the operator of the automobile which injured him. Plaintiff's counsel demurred to this defense, but after argument the demurrer was overruled, the Court stating:

I am satisfied that the weight of the authority supports the view that a release by one injured by another's negligence of the negligent person from all causes of action and claims arising out of the injury prevents an action by him against a physician for negligent treatment of the injury. (Citing 50 A. L. R., page 1106, and note commencing at page 1108.)

In the second case, decided some months previously, the evidence showed that the plaintiff had executed a general release to a railway company for the sum of $50, in which she released the railway company from all consequences which might flow from the accident. Thereafter the plaintiff brought suit against the doctor who attended her for the injuries sustained by the accident. The attorneys for the physician moved for judgment on the ground that the settlement made by the plaintiff with the railway company prevented the plaintiff from recovering any judgment against her physician. In giving judgment for the physician the Judge said:

One thing we have to bear in mind is that as a result of an injury through negligence there is only one cause of action. All these other elements may enhance the damages, or they may mitigate the damages, according to the circumstances of the particular case; but there is only one cause of action, whatever the consequences are. Those consequences, whatever they may be, as I say, merely enter into the damage that the person has suffered; and if a person satisfies that one cause of action, then it is satisfied. . . . Another thing that I want to point out is this: That the theory underlying this principle of law that we are applying here is very apparently this: It is one of the natural, proximate results of an injury that the injured person will consult a physician. That must be regarded as a proximate result of the accident. It follows also that it is another proximate result for the doctor to treat that injury; and it follows, further, that in connection with that treatment there is always the possibility of an erroneous diagnosis and an error in treatment. All those things, however, under the cases which have been cited—and which appear to be beyond question in their weight—all of those things are the natural, logical, and proximate results of the original injury; and that is the theory upon which this principle is based.

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* Editor's Note: This department of CALIFORNIA AND WESTERN MEDICINE, containing copy submitted by Hartley F. Peart, Esq., has been established by the California Medical Association Council. Each issue will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession. These will be compiled and edited by Mr. Hartley F. Peart, General Counsel of the Association.

CALIFORNIA STATE DEPARTMENT OF INDUSTRIAL RELATIONS*

Mr. President, and Ladies and Gentlemen comprising the California State Federation of Labor:

May I take this opportunity of thanking you for the invitation to address your convention regarding the activities and affairs of the California State Department of Industrial Relations, under whose administration, and through whose Divisions all of the labor laws of California are applied and enforced.

You will find this statement to be very brief and pertaining only to those very essential parts of the departmental work, wherein the working men and women of California are most vitally concerned.

INDUSTRIAL ACCIDENT COMMISSION

Under the Workmen's Compensation Insurance and Safety Act, the Industrial Accident Commission was instituted in 1911 for two purposes: one, to care for employees injured in employment; two, the prevention of injuries to the working people.

During the life of the Commission the population of California has increased from 4,200,000 to nearly 7,000,000 people, and in spite of the tremendous increase in population which carries with it a proportional increase in injuries to care for, and preventive measures to institute, the Commission has less employees today than it did thirteen years ago.

For the biennium commencing July 1, 1921, the Commission had an appropriation of $853,746 and for the biennium commencing July 1, 1935, $732,080.

In other words, in spite of an increased population proportionately increasing the work of the Commission, we have had our budget reduced more than $120,000, and the personnel by more than 20 per cent.

To show the increase in work, I would call your attention to the fact that in 1935 there were 262,955 injuries reported, as against 230,901 in 1934.

In 1923 the total premium intake of all insurance carriers dealing with compensation in this State was $13,961,000, and in 1935 for the same business the intake was more than $22,000,000—this shows a huge increase in the number of workers affected by the compensation laws.

Our Safety Department, which enforces all laws designed to insure the safety of employees while at work, now has twenty-nine employees where there were formerly fifty.

Amendments to the compensation law in the past fifteen years have tremendously increased the work of the Industrial Accident Commission, and owing to a decreased personnel caused by decreased budget, we now find ourselves in a position where, if we are to afford the working people of California the protection to which they are entitled under the Workmen's Compensation Law, we must have an increased budget for the purpose of increasing our staff of inspectors and enforcement officers.

IMMIGRATION AND HOUSING

The proper housing of working people, particularly in the agricultural and rural areas, is of particular importance and a tremendously big job.

California has more than seven thousand camps scattered all over the State in which workers are housed.

There are around two hundred thousand migratory agricultural workers in the State.

To inspect more than seven thousand camps and properly care for more than two hundred thousand people, we have four inspectors. It is silly to expect that four men can do all this work properly.

To enforce the State Housing Act there is one man working full time out of the Los Angeles office and one man part time out of the Sacramento office. Under these conditions proper enforcement is impossible. The lack of proper enforcement of the State Housing Act is costing the State of California thousands of dollars every year through loss in property value, due to faulty and poor construction of buildings. This loss exceeds by far the $42,000 which it cost the State to operate this Division last year.

* An address by T. A. Reardon, Director, presented to the California State Federation of Labor, Sacramento, September 14, 1936.